

REMARKS

Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request entry of the amendment and reconsideration of the claims.

Claims 1, 3-5, 16, 18-22 and 24-25 are pending in the application.

Claims 1, 2, 4, 5, 16, 18-22 and 24-25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Easley (US 6599271) in view of Maaskamp (US 6149633) in further view of Ureche et al (US 51677620). Applicant respectfully traverses these rejections.

Easley discloses a device wherein flow control is effected by altering the diameter of a tube by turning a screw that presses upon the exterior of a piece of flexible tubing to depress the tubing, "thereby forming a variable orifice." Col. 9, ll. 49-50. Alternatively, Easley discloses an embodiment using an adjustment means 101 including a tapered tip 98, which is movable within a channel 97 along threads 85. Easley states "As the tip 98 is moved upwardly . . . the liquid flow restriction in the channel 97 is reduced." Col. 11, ll. 13-18. Thus, the structures disclosed by Easley are completely unlike Applicant's claimed inventions, where flow restriction is obtained, along with non-linear flow, using a fixed diameter orifice.

The Examiner has acknowledged that Easley fails to explicitly disclose a flow restrictor with a diameter between 0.1 and 1.0 millimeter. It appears that it is the Examiner's position that Easley may be combined with Maaskamp to provide that limitation. However, in order for such a combination to render Applicant's claims unpatentable, some motivation for combining the references as suggested by the Examiner must be shown. Applicant believes, for the reasons set forth below, that such a combination is not appropriate.

The basic problem solved by Applicant's claimed inventions is set forth in Easley. Easley teaches use of a variable orifice that addresses the problem of corneal collapse caused the reopening of an obstructed aspiration tube. As Easley states:

An additional cause for pressure change is the elastic nature of the tubing connecting the eye to the vacuum source. The diameter of the tubing changes, based on the pressure difference between the inside of the tubing and atmospheric pressure. That is to say, the tubing becomes smaller as vacuum increases. These diameter changes cause the tubing

to store energy, damping pressure changes in the tubing. . .

When the occlusion breaks suddenly, the energy stored in the aspirating tubing causes a surge of fluid to flow, as the tubing returns to the size it was before the occlusion. US 6,599,271, Col. 2, ll. 15-29.

Thus, Easely teaches that use of flexible tubing is detrimental to flow control, and instead discloses using a particular arrangement wherein increases of vacuum cause only insignificant changes in volume between an ultrasound needle tip and the variable orifice. *See* Col. 8, ll. 1-33. One skilled in the art would thus find no motivation to substitute the small diameter tubing restrictor of Maaskamp for the variable orifice of Easely, because such a substitution would cause the very problem that Easely was attempting to solve.

Further, combining Ureche does nothing to solve this inherent problem. The tubes having internal diameters of about 2 mm would still store energy which would then be detrimentally released when the occlusion was opened. It is only when Applicant's fixed orifice, as claimed in all claims, is utilized that the problem inherent in flexible tubing is solved. For these reasons, Applicant believes that the claimed inventions are not obvious in view of the art cited by the Examiner, and no one skilled in the art, even combining the art as suggested by the Examiner, would obtain Applicant's claimed inventions. Accordingly, Applicant respectfully submits that claims 1, 3-5, 16, 18-22, 24 and 25 are patentable over the cited art, and requests that the rejections be withdrawn and the claims allowed.

CONCLUSION

Applicants have carefully reviewed the arguments presented in the Office Action and respectfully request entry of the amendment and reconsideration of the claims in view of the remarks presented. In light of the above amendments and remarks, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Should the Examiner have any questions concerning the above amendments and arguments, or any suggestions for further amending the claims to obtain allowance, Applicants request that the Examiner contact Applicants' attorney, John Fitzgerald, at 310-242-2667.

The Commissioner is authorized to credit any overpayment or charge any additional fees in this matter to our Deposit Account No. 06-2425.

Date: January 22, 2007

Respectfully submitted,

FULWIDER PATTON LLP

By: /john k. fitzgerald/
John K. Fitzgerald
Registration No. 38,881

JKF:vmm
Enclosures

Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Customer No. 24201